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### **REMARKS**

The claims have been amended to attempt to overcome the Examiner's rejection under 35 USC 112, second paragraph, on the use of open claim language (comprising) in the dependent claims which renders the limited scope of the phrase "consisting essentially of" in claims 1 and 28 void.

The main claims have been amended to consistently use the word consisting essentially of. The word "consisting essentially of" refers to an oil, at least one hydrophilic emulsifier selected from a group consisting of alkylpolyglycosides and at least one lipophilic co-emulsifier selected from a group consisting of non-alkoxylated nonionic surfactants.

Claim 3 has been amended to include the term wherein the oil phase component comprises a member selective group consisting of methyl oleate and methyl laurate. This would be consistent with the term "consisting essentially of an oil" in claim 1 which includes oils other than methyl oleate and methyl laurate in the composition. The phrase as used in claim 3 merely indicates that other oils can be utilized in the composition of claim 3 other than the methyl oleate and methyl laurate.

This statement is further supported by claim 4 which claims other oils useful in the composition of claim 1. Again, the term "comprises" is proper since it clearly indicates that oils other than those listed in claim 4 can be present but at least one of the oils listed in claim 4 must be present. The overall scope of the term oil phase is limited by the term "consisting essentially of" in all of the claims which are dependent upon claim 1.

Claim 7 utilizes the term "comprises at least one member selected from a group

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consisting of glycerol esters and sorbitan esters of fatty acids containing 6 to 22 carbon atoms. This term comprises in claim 7 clearly indicates that the co-emulsifier can contain other co-emulsifiers but must contain at least one of the glycerol esters and sorbitan esters. The use of the term "comprises" in claim 7 does not broaden the term "consisting essentially of" at least one lipophilic co-emulsifier selected from a group consisting of non-alkoxylated nonionic surfactants. Applicants submit that all of the claims have been amended in a similar manner to indicate that the various components which must be present but other components which falls within the limitations of claim 1 can also be present. Applicants respectfully request that the Examiner reconsider the rejection under 35 USC 102, second paragraph and withdraw the same.

Claims 10-11 and 23-24 are objected to under 37 CFR 1.75 as being substantial duplicates of claims 1 and 14, respectively. Applicants have amended claims 10, 11 and 23, 24 to overcome the objection. Applicants respectfully request reconsideration of the objected to claims as amended.

Claims 1-4, 6-12, 14-17 and 19-25 stand rejected under 35 USC 103(a) as unpatentable over Miller et al. (US 6,586,479). Applicants respectfully submit that Miller et al. neither teaches nor suggests the present invention.

Miller et al. discloses microemulsions containing an oil phase, a sorbitol ester, a carbomer and an anionic surfactant. The anionic surfactants are the preferred hydrophilic materials and are included in every example in the application. Applicants respectfully submit that Miller et al. would neither teach nor suggest the composition of the present

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invention which "consists essentially of" an oil phase, an alkylpolyglycoside and non-alkoxylated non-ionic surfactant (all surfactants being non-ionic).

Miller et al. is deficient in neither teaching nor suggesting substituting for the anionic surfactant a nonionic alkylpolyglycoside material. Applicants therefore respectfully submit that Miller et al. neither teaches nor suggests the present invention. Reconsideration and withdrawal of the rejection is respectfully requested.

In addition, Miller neither teaches nor suggests a mixture of the microemulsion with an agro chemical.

Claims 1-12, 14-25 stand rejected under 35 USC 103(a) as unpatentable over Klier et al. (US 5,538,662). Applicants respectfully submit that Klier et al. neither teaches nor suggests the present invention.

Klier et al. is directed to a gelled or solidified microemulsion composition. As presently amended, the claims in the present application are directed to a microemulsion which is liquid at its use temperature. This is one of the advantages of the microemulsion of the present invention in that it has a water-like viscosity. Applicants therefore respectfully submit that since Klier et al. requires that a gelling agent be included in the composition, it would clearly fall outside of a composition "consisting essentially of" the components set forth in the claims in the present application. Applicants therefore respectfully request reconsideration and withdrawal of the rejection over Klier et al. in view of the amendments entered in the claims.

Claims 1-38 stand rejected under 35 USC 103(a) as unpatentable over the

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combined teachings of Capuzzi et al. (US 5,905,072) and Auda et al. (US 6,586,366). Applicants respectfully submit that Capuzzi et al. and Auda et al. whether considered alone or in combination neither teach nor suggest the present invention. The Capuzzi et al. composition of necessity contains an anionic surface-active agent selected from a group consisting of alkyl benzene sulfonates, alkylsulfosuccinates and their metal salts. The present application is written in the form that the composition consists essentially of an oil component, water and two non-ionic surfactants. One of the non-ionic surfactants is alkoxyate free. Applicants therefore respectfully submit that Capuzzi et al. neither teaches nor suggests the present invention.

The deficiencies in Capuzzi et al. are not cured by combination with Auda et al. Auda et al. requires the combination of one oil component, an alkylpolyglycoside and a non-ionic surfactant. The other non-ionic surfactant (other than the polyglycoside) may be any which will give a composition which is stable and homogenous for at least 24 hours after making up. Preferred non-ionic surfactants are of the formula  $R^1O(X)R^2$  and/or  $R^3N(XH)_2$ . The preferred surfactants are all alkoxyated materials and all of the examples contain alkoxyated non-ionic surfactants. There are no other type non-ionic surfactants outside of the alkylpolyglycosides which are illustrated in the Auda et al. disclosure. Applicants therefore respectfully submit that one skilled in the art would clearly be led to the conclusion that the at least one other non-ionic surfactant must be an alkoxyated non-ionic surfactant. Applicants therefore respectfully submit that the combination of Capuzzi et al. with Auda et al. neither teaches nor suggests the present invention.

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In view of the amendments entered in the claims and the above discussion, Applicants respectfully submit that the application is in condition for allowance and favorable consideration is requested.

Respectfully submitted,

  
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